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Attorney for Defendant Guan Huang

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK, N.A., AS TRUSTEE)	CASE NO. CV-02561-EMC
for the CLARA POPPIC TRUST,)	
)	
Plaintiff(s),)	
)	
)	
v.)	DEFENDANT GUAN HUANG's
)	RESPONSE TO PLAINTIFF's FIRST
)	AMENDED COMPLAINT,
)	AFFIRMATIVE DEFENSES, AND
)	COUNTERCLAIMS AGAINST
)	PLAINTIFF
KENNETH G. RENZ, et al.)	
)	
)	DEMAND FOR JURY TRIAL
Defendant(s).)	
)	

Defendant Guan Huang (hereinafter referred to as "Defendant Huang"), by his attorney of record, hereby responds, only for himself and not for any other defendant, to the allegations of the First Amended Complaint filed against him by Plaintiff Wells Fargo Bank., N.A as Trustee for the Clara Poppic Trust (hereinafter referred to as the "Plaintiff").

1. Defendant Huang lacks knowledge or information sufficient to form a belief as to the

1 truth of the allegations of Paragraph 1, and on that basis they are denied.

2 2. The allegations of Paragraph 2 relating to there being jurisdiction under 42 U.S.C. §
3 6972(a) are specifically denied. Presently, there is no jurisdiction under 42 U.S.C. § 6972(a).
4 Otherwise, those allegations of Paragraph 2 relating to statutes and rules constitute statements on
5 the existence of and conclusions about purpose and meaning of the law, and no response is
6 required beyond the fact that the statutes and rules speak for themselves. To the extent Paragraph
7 2 otherwise contains any factual allegations, Defendant Huang lacks knowledge or information
8 sufficient to form a belief as to the truth of the allegations, and on that basis they are denied.
9

10 3. Defendant Huang admits that 2531 Telegraph Avenue, Berkeley, is located such that
11 venue is proper. Otherwise, those allegations of Paragraph 3 relating to statutes and rules
12 constitute statements on the existence of and conclusions about purpose and meaning of the law,
13 and no response is required beyond the fact that the statutes and rules speak for themselves. To the
14 extent Paragraph 3 otherwise contains any factual allegations, Defendant Huang lacks knowledge
15 or information sufficient to form a belief as to the truth of the allegations, and on that basis they
16 are denied.
17

18 4. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations of Paragraph 4, and on that basis they are denied.
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21 5. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
22 truth of the allegations of Paragraph 5, and on that basis they are denied.
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24 6. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations of Paragraph 6, and on that basis they are denied.

26 7. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations of Paragraph 7, and on that basis they are denied.
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1 8. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations of Paragraph 8, and on that basis they are denied.

3 9. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations of Paragraph 9, and on that basis they are denied.

5 10. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations of Paragraph 10, and on that basis they are denied.

7 11. The allegations of Paragraph 11 of the Plaintiff's First Amended Complaint are
8 admitted.

9 12. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations of Paragraph 12, and on that basis they are denied.

11 13. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations of Paragraph 13, and on that basis they are denied.

13 14. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations of Paragraph 14, and on that basis they are denied.

15 15. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
16 truth of the allegations of Paragraph 15, and on that basis they are denied.

17 16. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations of Paragraph 16, and on that basis they are denied.

19 17. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations of Paragraph 17, and on that basis they are denied.

21 18. The allegations of Paragraph 18 of the Plaintiff's First Amended Complaint against
22 Defendant Huang are specifically denied.

23 19. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
24

1 truth of the allegations of Paragraph 19, and on that basis they are denied.

2 20. The allegations of Paragraph 20 of the Plaintiff's First Amended Complaint are
3 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
4 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
5 Paragraph 20, and on that basis they are denied.
6

7 21. The allegations of Paragraph 21 of the Plaintiff's First Amended Complaint are
8 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
9 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
10 Paragraph 21, and on that basis they are denied.
11

12 22. Defendant Huang fully and specifically realleges and incorporates by reference his
13 responses to Paragraphs 1 through 21 of the Plaintiff's First Amended Complaint.

14 23. Those allegations of Paragraph 23 relating to statute constitute statements on the
15 existence of and conclusions about purpose and meaning of the law, and no response is required
16 beyond the fact that the statutes speak for themselves. To the extent Paragraph 23 otherwise
17 contains any factual allegations, Defendant Huang lacks knowledge or information sufficient to
18 form a belief as to the truth of the allegations, and on that basis they are denied.
19

20 24. The allegations of Paragraph 24 of the Plaintiff's First Amended Complaint are
21 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
22 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
23 Paragraph 24, and on that basis they are denied.
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25 25. The first sentence of Paragraph 25 constitutes statements on the existence of and
26 conclusions about purpose and meaning of statute and no response is required beyond the fact that
27 the law speaks for itself. Defendant Huang lacks knowledge or information sufficient to form a
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1 belief as to the truth of the remaining allegations of Paragraph 25, and on that basis they are
2 denied.

3 26. The allegations of Paragraph 26 of the Plaintiff's First Amended Complaint are
4 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
6 Paragraph 26, and on that basis they are denied.

7 27. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations of the first sentence of Paragraph 27, and on that basis they are denied.
9 The allegations of the second sentence of Paragraph 27 of the Plaintiff's First Amended Complaint
10 are specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang
11 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
12 allegations of Paragraph 27, and on that basis they are denied.

13 28. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations of Paragraph 28, and on that basis they are denied.

15 29. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
16 truth of the allegations of Paragraph 29, and on that basis they are denied.

17 30. The allegations of Paragraph 30 of the Plaintiff's First Amended Complaint are
18 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
19 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
20 Paragraph 30, and on that basis they are denied.

21 31. The allegations of Paragraph 31 of the Plaintiff's First Amended Complaint are
22 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
23 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
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1 Paragraph 31, and on that basis they are denied.

2 32. Defendant Huang fully and specifically realleges and incorporates by reference his
3 responses to paragraphs 1 through 31 of the Plaintiff's First Amended Complaint.

4 33. Paragraph 33 constitutes statements on the existence of and conclusions about
5 purpose and meaning of statute and no response is required beyond the fact that the law speaks for
6 itself.

7 34. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations of Paragraph 34, and on that basis they are denied.

9 35. The allegations of Paragraph 35 of the Plaintiff's First Amended Complaint are
10 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
11 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
12 Paragraph 35, and on that basis they are denied.

13 36. Defendant Huang fully and specifically realleges and incorporates by reference his
14 responses to paragraphs 1 through 35 of the Plaintiff's First Amended Complaint.

15 37. The allegations of Paragraph 37 of the Plaintiff's First Amended Complaint are
16 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
17 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
18 Paragraph 37, and on that basis they are denied.

19 38. The allegations of Paragraph 38 of the Plaintiff's First Amended Complaint are
20 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
21 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
22 Paragraph 31, and on that basis they are denied.

23 39. Defendant Huang lacks knowledge or information sufficient to form a belief as to the

1 truth of the allegations of Paragraph 39, and on that basis they are denied.

2 40. Defendant Huang specifically denies that he bears any responsibility for the damages
3 claimed by the Plaintiff and that he is obligated in any way to indemnify the Plaintiff. Defendant
4 Huang lacks knowledge or information sufficient to form a belief as to the truth of the remaining
5 allegations of Paragraph 40, and on that basis they are denied.
6

7 41. Defendant Huang fully and specifically realleges and incorporates by reference his
8 responses to paragraphs 1 through 40 of the Plaintiff's First Amended Complaint.

9 42. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations of Paragraph 42, and on that basis they are denied.
11

12 43. Defendant Huang specifically denies that he bears any responsibility for the damages
13 claimed by the Plaintiff and that he is obligated in any way to indemnify the Plaintiff. Defendant
14 Huang lacks knowledge or information sufficient to form a belief as to the truth of the remaining
15 allegations of Paragraph 43, and on that basis they are denied.
16

17 44. Defendant Huang specifically denies that he bears any responsibility for the damages
18 claimed by the Plaintiff and that he is obligated in any way to indemnify the Plaintiff. Defendant
19 Huang lacks knowledge or information sufficient to form a belief as to the truth of the remaining
20 allegations of Paragraph 44, and on that basis they are denied.

21 45. Defendant Huang fully and specifically realleges and incorporates by reference his
22 responses to paragraphs 1 through 44 of the Plaintiff's First Amended Complaint.

23 46. The first sentence of Paragraph 46 constitutes statements on the existence of and
24 conclusions about purpose and meaning of statute and no response is required beyond the fact that
25 the law speaks for itself. Defendant Huang specifically denies that he bears any responsibility for
26 contribution pursuant to Water Code Section 13350(i) and that he is obligated in any way to
27

1 indemnify the Plaintiff. Defendant Huang lacks knowledge or information sufficient to form a
2 belief as to the truth of the remaining allegations of Paragraph 46, and on that basis they are
3 denied.

4
5 47. Defendant Huang fully and specifically realleges and incorporates by reference his
6 responses to paragraphs 1 through 46 of the Plaintiff's First Amended Complaint.

7 48. The allegations of Paragraph 48 of the Plaintiff's First Amended Complaint are
8 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
9 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
10 Paragraph 48, and on that basis they are denied.

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12 49. The allegations of Paragraph 49 of the Plaintiff's First Amended Complaint against
13 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
14 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 49, and on that
15 basis they are denied.

16 50. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
17 truth of the allegations of Paragraph 50, and on that basis they are denied.

18
19 51. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations of Paragraph 51, and on that basis they are denied.

21 52. Defendant Huang fully and specifically realleges and incorporates by reference his
22 responses to paragraphs 1 through 51 of the Plaintiff's First Amended Complaint.

23 53. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations of Paragraph 53, and on that basis they are denied.

25
26 54. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations of Paragraph 54, and on that basis they are denied.

1 55. The allegations of Paragraph 55 of the Plaintiff's First Amended Complaint against
2 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
3 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 55, and on that
4 basis they are denied.

5
6 56. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations of Paragraph 56, and on that basis they are denied.

8 57. Defendant Huang fully and specifically realleges and incorporates by reference his
9 responses to paragraphs 1 through 56 of the Plaintiff's First Amended Complaint.

10 58. The allegations of Paragraph 58 of the Plaintiff's First Amended Complaint against
11 Defendant Huang are specifically denied. The first sentence of Paragraph 58 constitutes
12 statements on the existence of and conclusions about purpose and meaning of statute and no
13 response is required beyond the fact that the law speaks for itself. Defendant Huang lacks
14 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
15 Paragraph 58, and on that basis they are denied.

16
17 59. The allegations in the first sentence of Paragraph 59 of the Plaintiff's First Amended
18 Complaint against Defendant Huang are specifically denied. Defendant Huang lacks knowledge or
19 information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 59,
20 and on that basis they are denied.

21
22 60. Defendant Huang fully and specifically realleges and incorporates by reference his
23 responses to paragraphs 1 through 59 of the Plaintiff's First Amended Complaint.

24 61. The allegations of Paragraph 61 of the Plaintiff's First Amended Complaint against
25 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
26 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 61, and on that
27 basis they are denied.

1 basis they are denied.

2 62. The allegations of Paragraph 62 of the Plaintiff's First Amended Complaint against
3 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
4 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 62, and on that
5 basis they are denied.
6

7 63. The allegations of Paragraph 63 of the Plaintiff's First Amended Complaint against
8 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
9 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 63, and on that
10 basis they are denied.
11

12 64. Defendant Huang fully and specifically realleges and incorporates by reference his
13 responses to paragraphs 1 through 63 of the Plaintiff's First Amended Complaint.

14 65. The allegations of Paragraph 65 of the Plaintiff's First Amended Complaint against
15 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
16 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 65, and on that
17 basis they are denied.
18

19 66. The allegations of Paragraph 66 of the Plaintiff's First Amended Complaint against
20 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
21 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 66, and on that
22 basis they are denied.

23 67. Defendant Huang fully and specifically realleges and incorporates by reference his
24 responses to paragraphs 1 through 66 of the Plaintiff's First Amended Complaint.

25 68. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations of Paragraph 68, and on that basis they are denied.
27

1 69. The allegations of Paragraph 69 of the Plaintiff's First Amended Complaint against
2 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
3 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 69, and on that
4 basis they are denied.
5

6 70. The allegations of Paragraph 70 of the Plaintiff's First Amended Complaint against
7 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
8 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 70, and on that
9 basis they are denied.
10

11 71. The allegations of Paragraph 71 of the Plaintiff's First Amended Complaint against
12 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
13 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 71, and on that
14 basis they are denied.
15

16 72. The allegations of Paragraph 72 of the Plaintiff's First Amended Complaint against
17 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
18 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 72, and on that
19 basis they are denied.
20

21 73. Defendant Huang fully and specifically realleges and incorporates by reference his
22 responses to paragraphs 1 through 72 of the Plaintiff's First Amended Complaint.
23

24 74. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
25 truth of the remaining allegations of Paragraph 74, and on that basis they are denied.
26

27 75. The allegations of Paragraph 75 of the Plaintiff's First Amended Complaint are
28 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
knowledge or information sufficient to form a belief as to the truth of the remaining allegations of

1 Paragraph 75, and on that basis they are denied.

2 76. The allegations of Paragraph 76 of the Plaintiff's First Amended Complaint against
3 Defendant Huang are specifically denied.

4 77. The allegations of Paragraph 77 of the Plaintiff's First Amended Complaint are
5 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
6 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
7 Paragraph 77, and on that basis they are denied.

8 78. The allegations of Paragraph 78 of the Plaintiff's First Amended Complaint are
9 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
10 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
11 Paragraph 78, and on that basis they are denied.

12 79. Defendant Huang fully and specifically realleges and incorporates by reference his
13 responses to paragraphs 1 through 78 of the Plaintiff's First Amended Complaint.

14 80. Defendant Huang lacks knowledge or information sufficient to form a belief as to the
15 truth of the remaining allegations of Paragraph 80, and on that basis they are denied.

16 81. The allegations of Paragraph 81 of the Plaintiff's First Amended Complaint are
17 specifically denied insofar as they relate in any way to Defendant Huang. Defendant Huang lacks
18 knowledge or information sufficient to form a belief as to the truth of the remaining allegations of
19 Paragraph 81, and on that basis they are denied.

20 82. The allegations of Paragraph 82 of the Plaintiff's First Amended Complaint against
21 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
22 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 82, and on that
23 basis they are denied.

1 83. Defendant Huang fully and specifically realleges and incorporates by reference his
2 responses to paragraphs 1 through 82 of the Plaintiff's First Amended Complaint.

3 84. The allegations of Paragraph 84 of the Plaintiff's First Amended Complaint against
4 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
5 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 84, and on that
6 basis they are denied.
7

8 85. The allegations of Paragraph 85 of the Plaintiff's First Amended Complaint against
9 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
10 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 85 and on that
11 basis they are denied.
12

13 86. The allegations of Paragraph 86 of the Plaintiff's First Amended Complaint against
14 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
15 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 86, and on that
16 basis they are denied.
17

18 87. The allegations of Paragraph 87 of the Plaintiff's First Amended Complaint against
19 Defendant Huang are specifically denied. Defendant Huang lacks knowledge or information
20 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 87, and on that
21 basis they are denied.
22

23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 **Failure to State a Claim**

26 The Plaintiff's First Amended Complaint, and each and every cause of action therein, fails to state
27 facts sufficient to constitute a claim for which relief may be granted against Defendant Huang.
28

1 SECOND AFFIRMATIVE DEFENSE

2 Statutes of Limitations

3 One or more of the causes of action Plaintiff's First Amended Complaint is barred by the
4 applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure
5 § 338.
6

7 THIRD AFFIRMATIVE DEFENSE

8 Waiver and Estoppel

9 The Plaintiff's First Amended Complaint and each and every cause of action applicable to
10 Defendant Huang therein is barred by the equitable doctrines of waiver and estoppel because of the
11 acts, conduct and omissions of the Plaintiff and their agents and employees.
12

13 FOURTH AFFIRMATIVE DEFENSE

14 Compliance with Statutes

15 All conduct and activities, if any, of Defendant Huang, as alleged in the Plaintiff's First Amended
16 Complaint, conformed to statutes, rules and regulations existing at all relevant times alleged in the
17 Plaintiff's First Amended Complaint.
18

19 FIFTH AFFIRMATIVE DEFENSE

20 Due Care and Diligence

21 Defendant Huang exercised due care and diligence in all of the matters alleged in the Plaintiff's
22 First Amended Complaint, and no act or omission by Defendant Huang was the proximate cause
23 of any damage, injury or loss to the Plaintiff.
24

25 SIXTH AFFIRMATIVE DEFENSE

26 Equitable Contribution and/or Indemnity
27

1 There may be persons and entities, both named and unnamed in the Plaintiff's First Amended
2 Complaint who either are or may be legally and proximately responsible for the Plaintiff's alleged
3 injuries and damages, if any, and Defendant Huang respectfully requests that this court determine
4 the nature and extent of said fault by other parties and determine a proper allocation of the same
5 between the parties for the purpose of permitting equitable contribution and/or indemnity among
6 the parties toward any judgment recovered by the Plaintiff, pursuant to, without limitation, the rule
7 of American Motorcycle Assn. v. Superior Court (1978) 20 Cal.3d 578, 146 Cal.Rptr. 182, and for
8 the purpose of reducing the share of Defendant Huang, if any, by a fair and equitable amount.
9

10 SEVENTH AFFIRMATIVE DEFENSE
11

12 Notice of Spills, Releases or Discharges

13 The Plaintiff's First Amended Complaint is barred, in whole or in part, based on Plaintiff's actual
14 or constructive notice of reported spills or releases, if any, from publicly available records.
15

16 EIGHTH AFFIRMATIVE DEFENSE

17 Failure to Mitigate

18 Any recovery to which the Plaintiff is entitled should be limited because the Plaintiff failed to
19 mitigate its damages.

20 NINTH AFFIRMATIVE DEFENSE

21 Frivolous Action

22 The Plaintiff's First Amended Complaint, or one or more portions of it, is frivolous, and
23 Defendant Huang should be entitled to reasonable costs and attorneys fees pursuant to California
24 Code of Civil Procedure § 1038.
25

26 TENTH AFFIRMATIVE DEFENSE

27 No Response Costs Incurred

1 Under CERCLA, the Plaintiff has incurred no response costs cognizable under the law.

2 ELEVENTH AFFIRMATIVE DEFENSE

3 No Jurisdiction Under RCRA

4 There is no jurisdiction under RCRA because Plaintiff did not properly notify Defendant Huang in
5 accordance with the statute and regulations prior to bringing this action against him.
6

7 TWELFTH AFFIRMATIVE DEFENSE

8 Laches

9 Plaintiff has unreasonably delayed the commencement of this action to the prejudice of Defendant
10 Huang, whereby the complaint and each and every cause of action therein applicable to Defendant
11 Huang is barred, in whole or in part, by the doctrine of laches.
12

13 THIRTEENTH AFFIRMATIVE DEFENSE

14 Comparative Negligence of Plaintiff

15 Plaintiff was negligent, careless or otherwise at fault concerning the matters alleged in the
16 complaint, and Plaintiff's own negligence, carelessness or other conduct constituting violation of
17 statute, regulation or ordinance and therefore negligence per se, including but not limited to the
18 negligence or other conduct of the agents or employees of Plaintiff, proximately caused or
19 contributed to Plaintiff's own injury and damages, if any, thereby reducing or eliminating Plaintiff's
20 entitlement to recovery, if any, in proportion to Plaintiff's own fault.
21

22 FOURTEENTH AFFIRMATIVE DEFENSE

23 Uncertainty

24 The complaint and each and every cause of action presented therein is vague, ambiguous and
25 uncertain, and fails to plead elements of claims with sufficient clarity, specificity and particularity.
26

27 FIFTEENTH AFFIRMATIVE DEFENSE

Degree of Fault

Defendant Huang refers to the California Civil Code provisions at §§ 1431.1 through 1431.5 and states that his liability, if any, should be allocated to him only in direct proportion to his degree of fault, if any, and further that his liability for non-economic damages should be only several and not joint, pursuant to those provisions.

WHEREFORE, Defendant Huang prays as follows:

- a. That the Plaintiff shall take nothing by reason of the Plaintiff's First Amended Complaint, and that judgment be rendered in favor of Defendant Huang;
- b. That Defendant Huang be awarded his costs of suit incurred in defense of this action;
- c. That, where authorized by statute or other law, if any, Defendant Huang be awarded his attorneys fees; and
- d. For such other and further relief as the Court deems just and proper.

WHEREFORE, Defendant Huang requests entry of judgment dismissing the Plaintiff's First Amended Complaint with prejudice and awarding Defendant Huang relief as requested in this response to the First Amended Complaint.

COUNTERCLAIMS AGAINST THE PLAINTIFF

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant Guan Huang (hereinafter "Counterclaimant Huang") hereby asserts his counterclaims against the Plaintiff, as follows:

INTRODUCTION

I. This case arises from the Plaintiff's unlawful allowance of polluting and contamination of soil and groundwater in connection with the operation of dry-cleaning businesses

1. at leased premises owned by the Plaintiff at 2531 Telegraph Avenue in Berkeley, California (the
2. "Property") alleged in Plaintiff's First Amended Complaint.

3. PARTIES

4. 2. Upon information and belief, Plaintiff Wells Fargo Bank, N.A., as Trustee for the
5. Clara Poppic Trust, is a bank and national association, with offices in San Francisco, California.

6. 3. Defendant Guan Huang is a natural person residing in the City of San Francisco,
7. California.

8. JURISDICTION AND VENUE

9. 4. Upon information and belief, this action primarily arises under the federal
10. Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42
11. U.S.C. §§ 9601, *et seq.* This Court therefore has jurisdiction over the subject matter of this action
12. pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 9613(b), 42 U.S.C. § 9607(a), 42 U.S.C. § 9613(f), 28
13. U.S.C. § 2201, 28 U.S.C. § 2202 and Federal Rules of Civil Procedure, Rule 57. This Court has
14. supplemental jurisdiction of the state claims asserted in this action pursuant to 28 U.S.C. § 1367.
15. The federal and state claims herein alleged are based on the same set of operative facts. Judicial
16. economy, convenience, and fairness to the parties will result if this Court assumes and exercises
17. jurisdiction over the state claims.

18. 5. Venue is proper in this Court under the provisions of 28 U.S.C. § 1391(b) as the
19. property that is the subject of this action and a substantial portion of the events or omissions giving
20. rise to these claims occurred in this judicial district. Venue is also proper under 42 U.S.C. §
21. 9613(b) as the releases and threatened releases of hazardous substances, and the damages that are
22. the subject of this action, occurred in the District, according to the allegations of the Plaintiff. All
23.
24.
25.
26.
27.

1 of the Plaintiff's activities, omissions and conduct pertinent to this action occurred in or near
 2 Berkeley, California.

3 **GENERAL ALLEGATIONS**

4 6. Counterclaimant Huang is informed and believes, and on that basis alleges, that the
 5 Plaintiff is the current owner of the Property and has been the owner of the Property at all times
 6 pertinent to this action.
 7

8 7. Based on information and belief, as a direct and proximate result of the Plaintiff's
 9 conduct and failure to act, and due to its failure to carry out its legal duties and responsibilities and
 10 its violations of applicable laws, the Property came to be contaminated by the release of hazardous
 11 substances.
 12

13 **FIRST COUNTERCLAIM** 14 **(CERCLA SECTION 107(A) AND 113 FOR NECESSARY COSTS OF RESPONSE AND CONTRIBUTION)**

15 8. Counterclaimant Huang realleges each of the foregoing paragraphs of this
 16 counterclaim and incorporates them herein by reference as though set forth in full herein.
 17

18 9. The Property is a "facility" within the meaning of 42 U.S.C. § 9601(9). Plaintiff is
 19 a "person" within the meaning of 42 U.S.C. § 9601(21). The contaminants located in the soil and
 20 ground water at, on, or under the Property, including but not limited to PCE, are "hazardous
 21 substances" within the meaning of 42 U.S.C. § 9601(14).
 22

23 10. Under Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and § 9613,
 24 Counterclaimant Huang seeks recovery of necessary costs of response and payment from the
 25 Plaintiff, and in the nature of contribution, for Counterclaimant Huang's outlays of all past present,
 26 and future necessary response costs, if any, incurred in response to the release of hazardous
 27 substances at or affecting the Property. As the past and current owner of the Property, and as the
 28

1 person and entity legally responsible for allowing the release and continued threat of the release of
2 hazardous substances into the soil, ground water and environment, Plaintiff is liable for the
3 contamination pursuant to 42 U.S.C. § 9607(a).
4

5 11. Counterclaimant Huang has incurred, and will continue to incur, necessary response
6 costs, including costs identifying responsible parties, and other such costs, in connection with the
7 releases and threatened releases of hazardous substances at the Property. All of the necessary
8 response costs incurred and to be incurred by Counterclaimant Huang are a result of the
9 contamination caused to the Property by the release of hazardous substances.
10

11 12. All costs incurred, or to be incurred, by Counterclaimant Huang in connection with
12 the investigation and remediation of the Property, including the surrounding adjacent and
13 downgradient areas, are necessary costs of response consistent with the provisions of CERCLA
14 and the National Contingency Plan.

15 13. Counterclaimant Huang will continue to incur response costs and other costs in
16 connection with the investigation and remediation of the Property as a result of ongoing efforts to
17 clean up, remediate and remove released hazardous substances from the environment. There has
18 been no completion of a removal action, nor has it been six years since the initiation of a remedial
19 action within the meaning of 42 U.S.C. § 9613(g).
20

21 14. The Plaintiff is liable to Counterclaimant Huang pursuant to 42 U.S.C. § 9607(a)
22 and § 9613 for all or part of the past, present, and future necessary costs of response, including
23 without limitation, investigation and remediation expenses, attorneys' fees, oversight costs and
24 interest, resulting from the release by the Plaintiff or by the acts or omissions of third parties with
25 whom the Plaintiff was in a contractual relationship at the Property, in an amount to be determined
26 at the time of trial.
27
28

1 15. Pursuant to 42 U.S.C. § 9613(g)(2), Counterclaimant Huang is entitled to a
2 declaratory judgment that the Plaintiff is liable in any subsequent action by Counterclaimant
3 Huang to recover further response costs or damages incurred in response to the release of
4 hazardous substances at and from the Property.

5
6 **SECOND COUNTERCLAIM**
7 **(HSAA SECTIONS § 25363 & 25399)**

8 16. Counterclaimant Huang realleges each of the foregoing paragraphs of this
9 counterclaim and incorporates them herein by reference as though set forth in full herein.

10 17. The Plaintiff is legally responsible for the release, within the meaning of the
11 Hazardous Substances Account Act ("HSAA"), California Health and Safety Code § 25320, of
12 hazardous substances at and from the Property, within the meaning of Health and Safety Code
13 § 25316.
14

15 18. The Plaintiff is a responsible party and/or a liable person within the meaning of
16 HSAA, Health and Safety Code § 25323.5.

17 19. Counterclaimant Huang has incurred, and will continue to incur, necessary response
18 costs, including costs identifying responsible parties, and other such costs, in connection with the
19 releases and threatened releases of hazardous substances at the Property. All of the necessary
20 response costs incurred and to be incurred by Counterclaimant Huang are a result of the
21 contamination caused to the Property by the release of hazardous substances, all pursuant to
22 HSAA and CERCLA and therefore he is entitled to contribution and indemnity from the Plaintiff
23 under HSAA, Health and Safety Code § 25363(e) and § 25399.
24
25

26 **THIRD COUNTERCLAIM**
27 **(NEGLIGENCE)**

1 20. Counterclaimant Huang realleges each of the foregoing paragraphs of this
2 counterclaim and incorporates them herein by reference as though set forth in full herein.

3 21. The Plaintiff owed and owes Counterclaimant Huang a duty of reasonable care to
4 prevent and/or properly remediate the release of contaminants, hazardous substances, materials,
5 wastes and/or pollutants into the soil, groundwater, surface and environment at the Property, and
6 avoid contaminating adjoining or nearby real property, including the Property, as well as a duty to
7 remediate and avoid damage to human health and the environment.

8 22. The Plaintiff breached its duties to Counterclaimant Huang by: (1) negligently,
9 grossly negligently and/or recklessly permitting the release of PCE and other contaminants to
10 contaminate the soil, ground water and environment at the Property and to migrate to and
11 contaminate other areas (both on and off of the Property); and (2) failing to fully and completely
12 investigate, clean up and remediate the damage caused by such contamination.

13 23. The Plaintiff, while owning the Property, had a duty at all times to avoid the
14 discharge or release of hazardous substances or contaminants in a manner which would cause
15 injury or damages to Counterclaimant Huang, the public, and the environment.

16 24. At all relevant times, the Plaintiff knew or should have known of the presence of
17 hazardous substances or contaminants on the leasehold created by the ongoing dry cleaning
18 operations, and knew or should have known of the fact that the hazardous substances or
19 contaminants had caused or contributed to the contamination on, off, under, adjacent to and
20 downgradient of the Property. Counterclaimant Huang is informed and believes that, by the
21 Plaintiff's acts and omissions, the Plaintiff negligently failed to exercise due care, thereby
22 proximately allowing and causing hazardous substances or contaminants to be released onto and
23 into the Property and surrounding areas.

1 25. As a direct and proximate result of the negligent acts or omissions of the Plaintiff,
2 Counterclaimant Huang has suffered damages, including but not limited to significant cost and
3 expense related to the release of the hazardous substances or contaminants on, under, adjacent to,
4 and downgradient of the Property and the surrounding areas.
5

6 **FOURTH COUNTERCLAIM**
7 **(NEGLIGENCE PER SE)**

8 26. Counterclaimant Huang realleges each of the foregoing paragraphs of this
9 counterclaim and incorporates them herein by reference as though set forth in full herein.

10 27. The Plaintiff at various times, was obligated to comply with certain ordinances,
11 statutes, and regulations governing use and/or ownership of the Property. In particular, the
12 Plaintiff was, at various times, obligated to comply with federal and State ordinances, statutes, and
13 regulations governing the storage, use and/or release(s) of hazardous substances and wastes at the
14 Property and nearby areas, and governing the activities at the Property. These certain ordinances,
15 statutes, and regulations set the minimum standard of care required of the Plaintiff in the use
16 and/or ownership of the leasehold at the Property.
17

18 28. The Plaintiff failed to comply with such certain ordinances, statutes, and
19 regulations governing use of the Property, particularly ordinances, statutes, and regulations
20 governing the storage, use and/or release(s) of hazardous substances or contaminants at the
21 Property and nearby areas by allowing use of the Property in a manner that resulted in the
22 contamination of the Property and the surrounding areas, through the release of hazardous
23 substances. Counterclaimant Huang avers that, in violating the ordinances, statutes, and
24 regulations, the Plaintiff failed *per se* to own and require operation of the Property in a reasonable
25 manner, resulting in injury and damage to Counterclaimant Huang.
26
27
28

29. Counterclaimant Huang is a member of the class of persons for whose protection those ordinances, statutes, and regulations were enacted.

30. The foregoing acts and/or omissions by the Plaintiff constitute negligence *per se* in violation of the laws and/or regulations of the United States and the State and local government.

31. As a direct and proximate result of the acts and/or omissions of the Plaintiff, Counterclaimant Huang has suffered injuries in that Counterclaimant Huang has been forced to incur costs and expenses that would not otherwise have been incurred.

32. As a further direct and proximate result of the acts and/or omissions of the Plaintiff, Counterclaimant Huang has suffered damages in an amount to be determined at the time of trial.

FIFTH COUNTERCLAIM
(DECLARATORY RELIEF)

33. Counterclaimant Huang realleges each of the foregoing paragraphs of this counterclaim and incorporates them herein by reference as though set forth in full herein.

34. Plaintiff is legally responsible for the contamination on, under, adjacent to and downgradient from the Property and the surrounding areas based on its acts and/or omissions at the Property. Plaintiff is responsible for its fair share of all monies expended and to be expended to ensure the proper clean up of the contamination at and surrounding the Property.

35. Counterclaimant Huang is informed and believes, and thereon avers, that the Plaintiff denies that it is responsible for said contamination and for all or any monies expended and to be expended to ensure the proper cleanup of the contamination into the future.

36. An actual controversy has arisen and now exists between Counterclaimant Huang and the Plaintiff on respective liabilities for the investigation, testing, and cleanup of the

contamination on, under, adjacent to and underlying the Property and the surrounding areas and the costs and expenses therefor.

37. A judicial determination is necessary and appropriate at this time in order that Counterclaimant Huang and the Plaintiff may ascertain liability, if any, with respect to the ongoing investigation, testing, remediation and clean up of the contamination at the Property and the costs and expenses therefor, and Counterclaimant Huang's damages resulting from the contamination on, under, adjacent to and downgradient from the Property and the surrounding areas.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant Huang prays for judgment against the Plaintiff, as follows:

1. For general economic and consequential damages in an amount to be determined at the time of trial;
2. For costs for the investigation, testing, remediation and clean up of the contamination on, under, adjacent to or downgradient from the Property and the surrounding areas in an amount to be determined at the time of trial;
3. For prejudgment interest on all sums expended in an amount to be determined at the time of trial;
4. Declaratory relief establishing the Plaintiff's liability for environmental contamination at the Property;
5. For Counterclaimant Huang's attorney's fees and costs of suit; and
6. For such other and further relief the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Defendant and Counterclaimant Huang hereby demands a Jury Trial on all issues so triable in this action, in accordance with Rule 38 of the Federal Rules of Civil Procedure.

Date: July 17, 2008

Respectfully submitted,

LAW OFFICES OF KARL R. MORTHOLE

By s/Karl R. Morthole

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